

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL SHAW,	§
	§
Defendant Below-	§ No. 491, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0509015887
Plaintiff Below-	§
Appellee.	§

Submitted: October 1, 2009  
Decided: December 3, 2009

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 3<sup>rd</sup> day of December 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Daniel Shaw, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Shaw's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury found Shaw guilty in June 2006 of trafficking in cocaine and other related offenses. The Superior Court sentenced Shaw on September 15, 2006 as a habitual

offender to a total of twelve years and four months at Level V incarceration, to be suspended after five years for decreasing levels of supervision. As part of his sentence, the Superior Court ordered that Shaw be held at Level V until transported to a drug rehabilitation program in North Carolina. This Court affirmed Shaw's convictions and sentence on direct appeal.<sup>1</sup> Thereafter, Shaw filed unsuccessful motions seeking postconviction relief and reduction of his sentence.

(3) In August 2009, Shaw filed a motion for correction of sentence, pursuant to Superior Court Criminal Rule 35(a), contending that his sentence was illegal because the Superior Court did not mention the North Carolina rehabilitation program when his sentence was orally pronounced. The Superior Court denied Shaw's motion. This appeal followed.

(4) A motion for correction of an illegal sentence under Rule 35(a) is very narrow in scope.<sup>2</sup> Rule 35(a) permits relief when "the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause."<sup>3</sup> Shaw does not, and could not, argue that his sentence exceeds the legal limits or violates double jeopardy principles. In fact, the substance of Shaw's argument is that his sentence was imposed in an illegal

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<sup>1</sup> *Shaw v. State*, 2007 WL 866196 (Del. Mar. 23, 2007).

<sup>2</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>3</sup> *Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4<sup>th</sup> Cir. 1992)).

manner. Such an argument, however, must be raised within 90 days of sentencing.<sup>4</sup> Shaw's motion, however, was filed several years after his sentence was imposed. Accordingly, we find no error in the Superior Court's denial of the motion for correction of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> See Del. Super. Ct. Crim. R. 35(a) (providing that a motion to correct a sentence imposed in an illegal manner must be filed within the time limit set forth in Rule 35(b), i.e., within 90 days of sentencing).